

REMARKS

Claims 1, 3-15, and 17-28 have been presented for examination. Claims 2 and 16 have been canceled without prejudice or disclaimer of subject matter recited therein. Claims 13-14 and 27-28 have been allowed. Applicant would like to thank the Examiner for indicating the allowable subject matter.

Claim Rejections under 35 USC §103(a)

Claims 1-12, 15-26 rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (US-6700879) in view of Arviv (US-6549759). Applicant respectfully traverses these rejections.

Claim 1 has been amended to recite that the monitoring step is effected by monitoring and analyzing upstream messages from the CPE devices. Neither of the cited references teach this limitation. To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), the prior art references must teach or suggest all the claim limitations. *See* M.P.E.P §2142. The combination of Taylor and Arviv do not disclose, teach or suggest each and every limitation of amended claim 1.

In rejecting claim the limitation “monitoring and analyzing upstream messages from the CPE device” of claim 2, the Examiner has cited figure 1, col. 3, lines 31-48 of Taylor. Applicant would like to respectfully point to the Examiner that the cited sections do not describe monitoring of upstream messages from the CPE device instead the cited sections describe data flow including packets and frames between the CPE device and the internet via the Central Office. Further, Taylor monitors downstream SNR to predict an acceptable downstream communication rate (*see* col. 1, lines 60-65). Taylor does not monitor upstream messages from the CPE devices. Arviv on the other hand, monitors the SNR and bit error rate on the CPE links to adjust the data rate. Taylor and Arviv, individual or in combination, do not show, disclose, teach, or suggest monitoring upstream messages from the CPE to determine appropriate modulation scheme. Accordingly, amended claim 1, is patentably distinguishable from the combination of the cited references.

Claims 3-12 depend from claim 1 and are patentably distinguishable from the cited references for at least the same reasons as claim 1.

Regarding claim 11, neither Taylor nor Arviv describe receiving and analyzing ARQ messages as recited in claim 11. In fact, in Taylor and Arviv, do not even describe the concept of messages. Thus, claim 11 is further patentably distinguishable from the combination of the cited references.

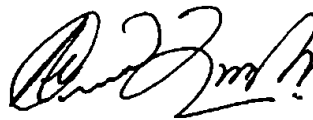
Regarding claim 12, contrary to the Examiner's assertion, Taylor does not disclose transmitting data simultaneously on all modulation modes. In fact, Taylor is directed to a point-to-point communication using individual subscriber lines. The data rate for each subscriber line is determined individually and the data is not simultaneously transmitted to all the subscriber lines on all modulation modes. Accordingly, claim 12 is further patentably distinguishable from the cited reference.

Claim 15 has been amended in the manner of claim 1, which has been distinguished from the combination of Taylor and Arviv for failing to disclose monitoring the upstream messages to determine the quality of downstream communication. Accordingly, claim 15 is patentably distinguishable from the cited references for at least the same reason as claim 1.

Claims 16-26 depend from claim 15 and are patentably distinguishable from the cited references for at least the same reason as claim 15.

Applicant believes this application and the claims herein to be in a condition for allowance. Should the Examiner have further inquiry concerning these matters, the Examiner is requested to please contact the below named attorney for Applicant.

Respectfully submitted,



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